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08/978,235	11/25/97	MASS	N 1874-4014

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IM71/0304

EXAMINER
JUSKA, C

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 03/04/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/978,235**

Applicant(s)  
**Mass et al.**

Examiner  
**Cheryl Juska**

Group Art Unit  
**1771**



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-8 is/are pending in the application.

Of the above, claim(s) 5-8 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-4 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, drawn to a knitted netting, classified in class 442, subclass 308.
  - II. Claims 5 and 6, drawn to a method of producing a knitted netting on a knitting machine, classified in class 66, subclass 208.
  - III. Claims 7 and 8, drawn to a wrapped bale of agricultural crops, classified in class 206, subclass 83.5.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the knitted netting could be made manually without the aid of a knitting machine.
3. Inventions of Group I and Group III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a netting for wrapping loads on pallets and the

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inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions of Group II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process claimed can be used to make a wrapped pallet.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Andrew Riddles on February 4, 1998, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Specification***

8. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitations of claims 2, 3, and 4 are not supported by the specification

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claims 1-4 are indefinite due to the use of the term "calculated shuss length" in line 6 of claim 1. Although the method of obtaining the calculated length is defined in the specification, it

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is unclear what the word "shuss" means. Said word receives no hits when searching on the computer databases of U.S. and foreign patents. Nor is the word in the five textile dictionaries which were checked. Additionally, the word could not be found in a bilingual textile dictionary which had translations in German, Spanish, French, Dutch, Finnish, Swedish, Danish, and Norwegian. The specification teaches that shuss ribbons correspond to reference number 12 in Figure 1 and reference number 18 in Figure 2. However, it is unclear from said figures whether the word "shuss" is defined solely by the direction of the ribbon or yarn within the knit or if the word "shuss" encompasses other inherent features of the ribbon or of the knitted netting. Also, it is unclear if a knit with a pattern other than that shown in Figures 1 and 2, wherein triangles are formed between parallel strands to form a net, could include shuss ribbons. Hence, claims 1-4 are indefinite.

12. Claim 2 is indefinite for it is unclear how 'one of said lateral polyolefin ribbons' can comprise 'a *plurality* of polyolefin ribbons.'

13. Claim 3 is indefinite for it is unclear what is meant by the phrase "said plurality of polyolefin ribbons are on the outside edges of the knitted netting." In particular, the limitation of 'the outside edges' is not defined by the claim or the specification.

14. Claim 3 recites the limitation "the outside edges" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 4 is indefinite for it is unclear what is meant by the phrase "at least one of said lateral polyolefin ribbons comprises all of said polyolefin ribbons."

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*Claim Rejections - 35 USC § 102*

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,256,353 issued to Leiber et al.

Claim 1 is drawn to a knitted netting comprising (a) longitudinal polyolefin ribbons and (b) lateral polyolefin ribbons knitted with said longitudinal polyolefin ribbons to form a knitted netting. Claim 1 also limits at least one of said lateral polyolefin ribbons of said knitted netting to have an actual length more than 110% of the length of a calculated shuss length for said knitted netting.

Leiber discloses a knitted netting comprised of longitudinal and lateral polyethylene ribbons which are Raschel knitted into a netting for use in wrapping pallets and agricultural bales (abstract, col. 1, lines 11-17, and claim 1). Leiber does not explicitly teach of the limitation of a 'calculated shuss length.' However, due to the uncertainty of said limitation (see paragraph 11 above) and due to the similarities of the Leiber invention to the Applicant's claimed invention, it is reasonable to presume that the Leiber invention would inherently possess an actual length of a longitudinal polyolefin ribbon which is within the range claimed by the Applicant. The burden is upon the Applicant to prove otherwise.

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*Claim Rejections - 35 USC § 103*

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Leiber patent.

Claim 2 limits the at least one of said lateral polyolefin ribbons to comprise a plurality of polyolefin ribbons. Claim 3 limits the netting of claim 2, wherein said plurality of polyolefin ribbons are on the outside edges of the knitted netting. Claim 4 limits the netting of claim 1 wherein said at least one of said lateral polyolefin ribbons comprises all of said polyolefin ribbons.

Although the limitations of claims 2-4 are indefinite, for purposes of examination said limitations are interpreted as meaning a plurality of ribbon strands are employed as one of the lateral ribbons which are knitted. Additionally, said limitations are interpreted as including the plurality of ribbons at an edge of said netting.

Although Leiber does not explicitly teach the limitations of claims 2-4, it would have been obvious to one of ordinary skill in the art to employ a plurality of ribbons for one of said lateral polyolefin ribbons. Motivation to do so would be to increase the strength of the netting in a lateral direction by using multiple strands for one ribbon. Additionally, it would have been



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obvious to employ the plurality of ribbons at a border or edge of the netting in order to increase strength in this edge region. Hence, claims 2-4 are rejected as being obvious over the cited art.

***Conclusion***

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marion McCamish, can be reached at (703) 308-3961. Fax numbers for this Group are (703) 305-3601 and (703) 305-7718.



Marion McCamish  
Supervisory Patent Examiner  
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cj



February 16, 1999